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MINTZ LEVIN COHN FERRIS
GLOVSKY & POPEO
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NO. 35437
ONE FINANCIAL CENTER
BOSTON MA 02111

COPY MAILED

JUL 31 2008

In re Patent No. 7,399,787 : LETTER REGARDING
Issued: July 15, 2008 : PATENT TERM ADJUSTMENT
Application No. 10/616,649 : AND NOTICE OF INTENT TO ISSUE
Filed: July 9, 2003 : CERTIFICATE OF CORRECTION
Docket No. 24852-501 CIP2 :

This letter is in response to the "COMMUNICATION" filed May 29, 2008. Pursuant to patentees' duty of good faith and candor to the Office, patentees request that the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy.

The request for review of the determination of patent term adjustment (PTA) is granted.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised patent term adjustment of 581 days.

On May 29, 2008, patentees submitted the instant comment. On July 15, 2008, the above-identified application matured into U.S. Patent No. 7,399,787, with a revised patent term adjustment of 645 days.

Patentees direct the Office's attention to the filing of an Information Disclosure Statement (IDS) on March 12, 2008, after filing a reply to the nonfinal Office action.

The application history has been reviewed and it has been concluded that the determination of patent term adjustment under 35 U.S.C. 154(b) of 645 days is incorrect.

Pursuant to 37 CFR 1.704(c)(8):

(c) Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(8) Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed[.]

A review of the record reveals that an additional period of reduction is warranted for filing a second IDS on March 12, 2008. See 37 CFR 1.704(c)(8). The record does not support a conclusion that the examiner expressly requested the IDS filed March 12, 2008. Further, a review the IDS reveals that patentees did not include a statement under 37 CFR 1.704(d).¹ Thus, patentees failed to engage in reasonable efforts to

¹ Pursuant to 37 CFR 1.704(d):

A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

conclude prosecution of the application. Accordingly, a period of reduction of an additional 64 days (from January 9, 2008 to March 12, 2008) is warranted.

In view thereof, the patent should have issued with a revised patent term adjustment of **581 days** (739 days of Office delay - 158 days of applicant delay).

As this letter was submitted as an advisement to the Office of an error in patentees' favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.18(e). The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office.

The application is being referred to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **581 days**.

Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.

Kery A. Fries

Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction

Day : Wednesday

PALMINTRANET

Date: 7/30/2008

Time: 15:40:08

PTA Calculations for Application: 10/616649

Application Filing Date:	07/09/2003	PTO Delay (PTO):	739
Issue Date of Patent:	07/15/2008	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	94
Post-Issue Petitions:	0	Total PTA (days):	581
PTO Delay Adjustment:	-64		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
96	07/30/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		64	
93.5	06/25/2008	PTA 36 MONTHS			
93	07/15/2008	PATENT ISSUE DATE USED IN PTA CALCULATION			
92	06/17/2008	EXPORT TO FINAL DATA CAPTURE			
91	06/12/2008	FINISHED INITIAL DATA CAPTURE			
90	06/13/2008	DISPATCH TO FDC			
89	06/13/2008	APPLICATION IS CONSIDERED READY FOR ISSUE			
88	05/29/2008	ISSUE FEE PAYMENT VERIFIED			
87	05/29/2008	STATEMENT FILED INDICATING A LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS			
86	06/03/2008	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
85	05/29/2008	ISSUE FEE PAYMENT RECEIVED			
84	06/02/2008	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
77	03/31/2008	EXPORT TO INITIAL DATA CAPTURE			
76	03/28/2008	MAIL NOTICE OF ALLOWANCE			
75	03/26/2008	ISSUE REVISION COMPLETED			
74	03/26/2008	DOCUMENT VERIFICATION			
73	03/26/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
72	03/26/2008	NOTICE OF ALLOWABILITY			
71	03/12/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
70	01/08/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			

69	03/12/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
68	01/08/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		18	65
67	12/21/2007	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
66	01/28/2008	DATE FORWARDED TO EXAMINER			
65	12/21/2007	RESPONSE AFTER NON-FINAL ACTION		1	62
64	12/21/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
63	01/08/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
62	09/20/2007	MAIL NON-FINAL REJECTION	10		53
61	09/17/2007	NON-FINAL REJECTION			
60	05/23/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
59	04/18/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
58	08/13/2007	CASE DOCKETED TO EXAMINER IN GAU			
57	05/23/2007	REFERENCE CAPTURE ON IDS			
56	05/23/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		13	53
55	05/23/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
54	05/31/2007	DATE FORWARDED TO EXAMINER			
53	05/10/2007	RESPONSE AFTER NON-FINAL ACTION		30	49
52	05/10/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
51	04/18/2007	REFERENCE CAPTURE ON IDS			
50.7	04/18/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
50	04/18/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
49	01/10/2007	MAIL NON-FINAL REJECTION			
48	01/05/2007	NON-FINAL REJECTION			
47	04/06/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
46	03/14/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
45	06/09/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			

44	09/13/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
43	10/05/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
42	07/25/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
41	10/18/2006	DATE FORWARDED TO EXAMINER			
40	10/06/2006	RESPONSE TO ELECTION / RESTRICTION FILED			
39	09/08/2006	MAIL RESTRICTION REQUIREMENT	729		-1
38	09/05/2006	REQUIREMENT FOR RESTRICTION / ELECTION			
37	08/14/2006	CASE DOCKETED TO EXAMINER IN GAU			
36	07/25/2006	REFERENCE CAPTURE ON IDS			
35.7	07/25/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
35	07/25/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
34	03/15/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
33	10/05/2005	REFERENCE CAPTURE ON IDS			
32	02/09/2004	NEW OR ADDITIONAL DRAWING FILED			
31	01/20/2006	CASE DOCKETED TO EXAMINER IN GAU			
30.7	10/05/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
30	10/05/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
29	09/13/2005	REFERENCE CAPTURE ON IDS			
28.7	09/13/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
28	09/13/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
27	06/09/2005	REFERENCE CAPTURE ON IDS			
26.7	06/09/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
26	06/09/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
25	04/12/2005	CASE DOCKETED TO EXAMINER IN GAU			
24	03/14/2005	REFERENCE CAPTURE ON IDS			
23.7	03/14/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
23	03/14/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

22	04/05/2005	CASE DOCKETED TO EXAMINER IN GAU			
21	06/07/2004	CASE DOCKETED TO EXAMINER IN GAU			
20	02/09/2004	OATH OR DECLARATION FILED (INCLUDING SUPPLEMENTAL)			
19	12/22/2003	PRELIMINARY AMENDMENT			
17.7	04/06/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
17	04/06/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	03/25/2004	APPLICATION RETURN FROM OIPE			
15	03/25/2004	APPLICATION RETURN TO OIPE			
14	03/25/2004	APPLICATION DISPATCHED FROM OIPE			
13	03/25/2004	APPLICATION IS NOW COMPLETE			
12	02/09/2004	ADDITIONAL APPLICATION FILING FEES		32	9
11	02/09/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
10	02/09/2004	APPLICANT HAS SUBMITTED NEW DRAWINGS TO CORRECT CORRECTED PAPERS PROBLEMS			
9	10/08/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
7	09/25/2003	CLEARED BY L&R (LARS)			
6	09/24/2003	CASE CLASSIFIED BY OIPE			
5	09/24/2003	INTENTIONALLY REFERRED BY OIPE OR L&R			
4	09/24/2003	CASE CLASSIFIED BY OIPE			
3	09/24/2003	CLEARED BY OIPE CSR			
2	09/03/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	07/09/2003	INITIAL EXAM TEAM NN			

Search Another: Application#

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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DRAFT

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,399,787 B2

DATED : Jul. 15, 2008

INVENTOR(S) : Chiao et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (645) days

Delete the phrase "by 645 days" and insert -- by 581 days--